

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICARDO CAPELLO,

Plaintiff,

v.

LESLIE SZIEBERT et al.

Defendant.

CASE NO. C13-5275 BHS-JRC

ORDER TO PAY THE COST OF
SERVICE

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

On August 14, 2013, the Court ordered the United States Marshal's Office to personally serve defendant Cunningham (ECF No. 47). Plaintiff had filed a motion asking for personal service after the time for defendant Cunningham to waive service had passed (ECF No. 37). The Court ordered defendant Cunningham to show cause why he should not be charged for the cost of service (ECF No. 47).

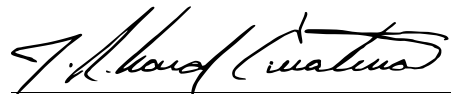
1 Defendant Cunningham responded on October 4, 2013 (ECF No. 56 and 57). The Court
2 has reviewed the response. Defendant Cunningham admits that the service packet sent to him
3 was received by his office, but he claims that it was "misfiled." (ECF No. 57). Defendant
4 Cunningham's affidavit reveals that he was aware of the action and had received calls from the
5 Assistant Attorney General representing other defendants prior to the Court ordering that he be
6 personally served (ECF No. 57 ¶ 4). Further, only hours after being personally served, the
7 missing documents were found (ECF No. 57 ¶ 6).

8 The Court was forced to send a Deputy United States Marshal to personally serve
9 defendant. Defendant Cunningham was not proactive regarding this matter and took no steps to
10 avoid making the Deputy United States Marshal make the trip to Olympia.

11 The Court finds it appropriate to charge defendant for the time and mileage involved with
12 having defendant Cunningham personally served. One hour of time at fifty five dollars per hour
13 and mileage at fifty-six and one half cents per mile equates to eighty-eight dollars and sixty cents
14 (\$88.60).

15 Within the next thirty days, defendant Cunningham will submit to the Clerk of Court a
16 check payable to the United States Marshal's Service for eighty-eight dollars and sixty cents
17 (\$88.60). Failure of the defendant to comply with this order may result in further sanctions or
18 proceedings for contempt of Court.

19 Dated this 8th day of October, 2013.

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22 J. Richard Creatura
23 United States Magistrate Judge
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